SENATE FINANCE COMMITTEE
March 20, 2013
9:21 a.m.

9:21:55 AM

CALL TO ORDER

Vice-Chair Fairclough called the Senate Finance Committee meeting to order at 9:21 a.m.

MEMBERS PRESENT

Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

Senator Pete Kelly, Co-Chair.

ALSO PRESENT

Michael Geraghty, Attorney General, Department of Law; Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law.

PRESENT VIA TELECONFERENCE

Linda Giani, Self, Wasilla.

SUMMARY

SB 22 CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

SB 22 was HEARD and HELD in committee for further consideration.

#sb22
SENATE BILL NO. 22

"An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking;

relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to procedures for granting immunity to a witness in a criminal proceeding; relating to consideration at sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in detention in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of "sex offense" regarding sex offender registration; relating to protective orders for stalking and sexual assault and for a crime involving domestic violence; relating to the definition of 'victim counseling centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to the subpoena power of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

Vice-Chair Fairclough observed that there were two new fiscal notes attached to the bill and related that version before the committee was CSSB 22(JUD).

9:23:30 AM

MICHAEL GERAGHTY, ATTORNEY GENERAL, DEPARTMENT OF LAW, related that Commissioner Masters could not be present in committee because of the tragic killing of a village public safety officer (VPSO) in Manokotak.

Senator Hoffman corrected Attorney General Geraghty's pronunciation of Manokotak. Attorney General Geraghty thanked Senator Hoffman for his correction and apologized.

Attorney General Geraghty recalled discussion about SB 56, which was also a bill that reclassified certain crimes and pointed out that SB 22 did not deal with the same issues. He explained that SB 22, with one exception, did not criminalize any conduct that was not already a crime. He added that the bill would not recriminalize anything and would not result in putting more people in prison.

Vice-Chair Fairclough requested a moment of silence to observe the tragedy in Manokotak.

Attorney General Geraghty stated that the most important aspect of the bill was to pursue the governor's goal of reducing domestic violence, sexual assault, and sexual abuse of children. He remarked that Governor Parnell's administration remained focused on protecting Alaskans from those crimes. He stated that the CSSB 22 would reverse an effect of a recent decision by the Alaska Court of Appeals, which allowed defendants to attempt to get their sentences reduced under circumstances that the administration believed violated the legislature's intent. He added that the bill corrected the effect of the recent court decision.

Attorney General Geraghty stated that the bill also addressed gaps in the sexual assault statutes to prohibit probation and parole officers from having sexual relations with people who were on probation or parole. He recalled an incident the prior winter, in which a contract employee for a probation officer had been coercing sex with the inmates; through a loophole in the law, it was discovered that the person could not be prosecuted. He explained that that this provision represented the one crime that was created in the

bill and reiterated that the legislation's other changes were modifications to the existing statutory scheme.

Attorney General Geraghty related that the bill also made changes in criminal procedures to protect victims of sexual assault, sexual abuse, and domestic violence. It also broadened the protection for these victims from the use of evidence of past and future sexual misconduct.

9:29:24 AM

Attorney General Geraghty read the following remarks from Commissioner Masters (copy on file):

> The Department of Public Safety is steadfast in its commitment to the Governor's goal of ending the epidemic of domestic violence, sexual assault, and sexual abuse in Alaska and I am honored to sit here with the Attorney General in introducing the CS for Senate Bill 22.
>
> This legislation builds on this commitment by strengthening the investigative tools available to the Alaska State Troopers and other law enforcement agencies to apprehend the perpetrators of these and other related crimes.
>
> Parts of the bill are highly useful to law enforcement as it:
>
> - Provides law enforcement with additional investigative tools by broadening the authority investigators have to intercept communications in sex trafficking cases.
>
>   These crimes commonly require cooperation and communication among perpetrators, and if we have enough evidence to justify a wiretap, this bill would allow us to request judicial authorization to do so.
>
> - It protects young people who are victims of sex trafficking or otherwise involved in prostitution, and strengthens the penalties on the demand side of sex trafficking, by requiring persons who prey on these victims to register as sex offenders.

- It provides additional protections for victims and survivors of domestic violence, sexual assault, and stalking.

- It allows victims of human trafficking, sex trafficking, and unlawful exploitation of a minor to apply for violent crimes compensation.

- Finally, this bill helps in the investigation of child pornography crimes, online enticement of a minor and unlawful exploitation of a minor by allowing the Attorney General (AG) to designate another attorney in his office to evaluate applications for an administrative subpoena to obtain business records from an Internet Service Provider.

  The investigation of these crimes often requires quick action by law enforcement. Under current law, only the AG himself can approve them.

Thank you for the opportunity to introduce the CS for SB 22 to the Senate Finance Committee, and we urge your support of this important legislation.

Senator Dunleavy stated that educators were trained in reporting child abuse issues and that there was some indemnification for the process as a school district employee. He inquired if the bill required volunteers to report suspected child abuse and queried when and where the volunteers would get trained. He further inquired if the volunteers would be indemnified. His understanding was that someone could be sued by another organization for reporting suspected abuse and inquired if that was correct. Attorney General Geraghty deferred the question to Ms. Carpeneti.

9:33:14 AM

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, stated that the bill added athletic coaches to the list of individuals who were required to report suspected child abuse or neglect if they had reason to suspect it. She pointed out that the Senate Judiciary Committee had worked hard on the section of the bill that addressed athletic coaches because of concerns similar to Senator Dunleavy's.

She stated that the bill only required volunteer athletic coaches to report if they had spent more than 4 hours a week for 4 consecutive weeks with the team, or 20 hours in a single month; additionally, volunteers would be required to report if they had received training similar to what was required of school district employees under Title 47.17.022 of the Alaska Statutes, or if they signed a statement that acknowledged that they were required to report. She explained that for those who were required to report, there was a provision in Title 47 that indemnified them for good-faith reporting.

Senator Dunleavy observed that the bill read "coaches or volunteer." Ms. Carpeneti replied that the way it was re-drafted was "interesting" and that DOL had worked with the Legislative Affairs Agency on the bill.

Vice-Chair Fairclough requested a page number to where Senator Dunleavy was reading from. Senator Dunleavy referenced page 19, lines 4 and 5, as well as page 20 of the bill.

Ms. Carpeneti directed the committee to page 19, line 22 and shared that this provision limited volunteer coaches to the circumstances that she had previously described.

Senator Dunleavy stated that the second issue was indemnification. He recalled that as a school district employee, he felt that they were led to believe that indemnification protected good-faith reporters under the law. He inquired if it was true that a reporter was "not necessarily" indemnified and could have a lawsuit brought against them for actually reporting. Ms. Carpeneti responded that AS 47.17.050 granted immunity to good-faith reporters that were required to report under the law; however, this did not exclude an individual from filing a lawsuit against a reporter. She explained that anyone could file a lawsuit and that whether or not the suit was upheld was another question. She pointed out that people who would be required to report under the bill would have the same immunity that was offered to people that were currently required to report.

Senator Olson noted that even if a defendant had immunity, they would still have to hire a lawyer to demonstrate the immunity. He inquired who would pay for the defense lawyer in this case. Ms. Carpeneti responded that she was unsure

about the answer and would have to get back to the committee with a response.

Senator Dunleavy requested that Ms. Carpeneti cite the indemnification statute again. Ms. Carpeneti reiterated that the statute was AS 47.17.050.

9:37:50 AM

Senator Dunleavy noted that unless the volunteer reporting issues were clarified, people might not want to volunteer. He noted that if the indemnification concept did not prevent the actual costs associated with a court defense that resulted from reporting according to the law, the volunteer would be caught between a "rock and a hard place." He expounded that not reporting would be a criminal offense and that reporting could result in civil lawsuit. He opined that a volunteer could be punished for doing the right thing. Ms. Carpeneti stated that Senator Dunleavy had described a position that every mandatory reporter was in and that it was a tough public-policy issue for the committee to decide. She explained that the Senate Judiciary Committee had worked hard on the bill's compromise and that there were volunteer coaches that did a great job assisting paid employees with coaching duties. She observed that there were volunteer coaches all over the state that did a great job coaching sports teams and that the Senate Judiciary Committee had thought it would be appropriate to have them be mandatory reporters if they met the criteria laid out in the bill. She reiterated that mandatory reporting for volunteers was a tough public policy issue and that every mandatory reporter was subject to the concern of lawsuits being filed against them. She pointed out that even if the law stated that they could not win, someone could still file a lawsuit that needed to be responded to.

Senator Dunleavy noted that the concept was fraught with all sorts of issues. He related that in an attempt to protect children, people ended up in a "choose your poison" situation. He inquired if excluding volunteers from the bill would result in them been excluded from the lawful responsibility to report suspected child abuse or neglect. Ms. Carpeneti replied that it would exclude them from the mandatory duty to report, but that they would still be free to report; they could be subject to civil litigation, but would not necessarily be subject to damages. She explained

that civil rules did provide that costs be awarded to a defendant who had won a case and that she could provide more information regarding the compensation for defendants.

Vice-Chair Fairclough noted that the line of questioning was important, but that committee was "rolling out" the bill and was not in debate. She remarked that she had several questions regarding who was actually paying for the volunteers to be trained.

Vice-Chair Fairclough noted that there was a question regarding the possible exclusion of non-profit coaches from the reporting requirements. She remarked that someone working for a non-profit organization would be paid and noted that questions had arisen whether these individuals would be excluded on page 19, line 23 of the bill. She read from page 19, line 23 of the bill as follows:

> Sec. 37. AS 47.17.020 is amended by adding a new subsection to read:
>
> (j) This section does not require an athletic coach who is an unpaid volunteer to report child abuse or neglect under (a)(9) of this section…

Vice-Chair Fairclough noted that the committee would continue to deal with the issue of volunteers in the bill.

9:42:31 AM

Senator Hoffman inquired over what time period a person was required to report suspected abuse or neglect. Ms. Carpeneti stated that DOL had not drafted the wording and that the language had been adopted by the Senate Judiciary Committee. She read the bill to mean that, if the other criteria were met, a volunteer coach would be required to report during that one month that they had extensive contact with the children. She stated that a coach would not have a duty to report during the offseason. Senator Hoffman observed that the language should be more specific if the intent was as Mr. Carpeneti had surmised.

Attorney General Geraghty related that the circumstances would have to be egregious for a person to be prosecuted for failing to report suspected child abuse or neglect. He discussed a recent scandal at Penn State University and related that witnesses to the scandal had actually failed

to report observed child abuse, not just suspected abuse. He related that concern regarding an abusive prosecution going after someone for failing to report was understandable, but reiterated that it would take some pretty egregious circumstances for the state to prosecute someone for failing to report. He related that coaches were with kids a significant amount of time and stated that while the provision may need some tightening or clarification, it was appropriate. He recalled examples in recent memory where abuse should have been reported, but instead went years undetected.

Vice-Chair Fairclough reiterated that the committee was not debating the bill, but was trying to understand a policy that the administration was advancing to protect children.

Senator Olson agreed that the offenses would have to be egregious in order for charges to be brought against someone for not reporting, but that the issue was the "cold water" that was being splashed onto volunteers. He related that volunteers in the rural areas of the state were scarce and warned that the bill's volunteer provision could prevent people from wanting to participate. Attorney General Geraghty responded that the point was well taken.

Senator Dunleavy pointed out that he was not advocating not reporting. He remarked that his point had not been to not report if abuse was observed, but that there were about four issues imbedded within the bill that could be changed for the benefit of everyone. He noted for the record that he was not advocating not reporting egregious activities, but that there were several issues in the legislation that needed to be addressed to better protect the children and others surrounding the issue.

9:47:22 AM

Vice-Chair Fairclough inquired whether the committee would like a sectional analysis or a higher level overview of bill. Senator Olson stated that he preferred a sectional, point-by-point analysis and noted that the bill would have far reaching effects.

Vice-Chair Fairclough requested committee members to hold their questions until Ms. Carpeneti had finished her

analysis and noted that she wanted to give the public time to testify on the bill. She requested that the written comments of Commissioner Masters be provided to the committee.

Ms. Carpeneti related that bill pursued the governor's goal of reducing sexual abuse, sexual assault, and domestic violence in Alaska, but that it did so in an unusual way. She explained that with one exception, the bill addressed the criminal procedural law in Alaska rather than substantive law, which made it difficult to explain. She stated that the exception to the bill that created a new crime was the creation of a Class C felony for a probation or parole officer to engage in sexual penetration with someone who was on probation or parole, which was similar to the crime that prohibited police or correctional officers from engaging in sexual penetration with people who were subject to the jurisdiction of their agencies; it also created a Class A misdemeanor for probation and parole officers to engage in sexual contact with a person on probation or parole. She pointed out that the law already had an exception to the offense for a probation or parole officer who was married to the person on probation or parole. The bill added an affirmative defense that the probation officer and the person on probation had a pre-existing relationship before the person was placed on probation and that it lasted up until the time of the alleged offense. In terms of procedural law, the bill allowed victims of sex and human trafficking to bring a civil action for damages, regardless of how much time had elapsed since the commission of the offense. The legislation also allowed the state to prosecute defendants that were charged with the distribution of child pornography, felony sex trafficking, and felony human trafficking, regardless of the time that had elapsed since the offense.

Ms. Carpeneti related that the bill clarified that an order to not contact a victim or a witness in a case applied to a defendant who had been unable to make the conditions of bail and was still in jail. She related that there were several cases in Fairbanks where a defendant was ordered not to contact the victim in a domestic violence case, but had done so from jail. She explained that the defendant had called the victim dozens of times when they had been unable to make bail. She reported that the court had concluded that the calls from jail were not covered by law because

the person had not met bail and was not out yet. She pointed out that the legislation would overrule a decision by the Court of Appeals based on findings by the Senate that were adopted in 2006 when the Senate had raised the presumption ranges for people who were conviction of most sex felonies; she offered to go into this into more detail, but was happy to do so at a later time.

Vice-Chair Fairclough noted that there was a request to go through the bill's analysis section by section. Ms. Carpeneti responded that she would go section by section.

9:52:46 AM

Ms. Carpeneti began to speak to the section analysis of the bill (copy on file). She related that she had already discussed Sections 1, 21, and 21 and had reviewed Section 2. She pointed out that Sections 3, 4, 5, 6, 7 and 8 dealt with probation and parole officers. She stated that Section 9 filled the gap in the crime of contacting a victim or witness in violation of a court order. She noted that Section 10 allowed the state to request the forfeiture of property at sentencing if it was used by the patron of a prostitute or the prostitute and if it was used in connection with the offense or was derived from the offense; the request was discretionary with the court and required that the defendant be convicted of the offense before forfeiture could be considered. She reported that Section 11 had already been dsicussed, but that it allowed the state to prosecute a person for the distribution of child pornography, felony sex trafficking, and human trafficking at any time. She relayed that Sections 12 and 13 allowed the court, at its own discretion, to require a person released on bail in connection with a domestic violence crime to be monitored by a global positioning device (GPS) or similar technology; it required that the court follow guidelines that were developed by the Department of Corrections in cooperation with the Department of Public Safety. She pointed out that the guidelines had not been adopted or considered and that it was something that would be instituted at a future date. She added that Sections 12 and 13 would allow the court to implement monitoring under circumstances that it felt would help the safety of the victim.

Ms. Carpeneti continued to speak to the sectional analysis of the bill and reported that Section 14 filled a gap in

the state's bail law; the current law required a defendant who was charged with a domestic violence crime to appear in person before a judge or call in by telephone before being released on bail. Section 14 required a person who had violated a condition of release and had been arrested for the violation to appear again in person before a judicial officer before being release on bail; the purpose was that the defendant in a domestic violence case would have personal contact with the judge, so that the judge could evaluate whether or not the release would be safe to the victim. She stated Section 15 had already been described, but that it allowed the attorney general to request a judge to give authorization to wiretap in the investigation of felony sex trafficking and 1st degree human trafficking. She pointed out that felony sex trafficking and 1st degree human trafficking typically involved cooperation among perpetrators and that Section 15 would assist law enforcement in investigating those crimes. She stated that Section 16 expanded the "rape shield protection"; the section addressed victims of sexual assault, sexual abuse, and the unlawful exploitation of a minor. She stated that the law provided that if someone wanted to introduce evidence concerning a victim's prior sexual conduct, that the defendant ask permission outside the presence of the jury and have it be addressed by the court in camera. She offered that the information could be very personal to a victim and that a judge could decide outside of the presence of the jury whether or not it ought to be allowed to be introduced. She pointed out that the bill allowed for the protection of evidence of the victim's conduct after the alleged offense in addition to before the offense. Section 16 also had a requirement that specified that the defense attorney had to make the request within 5 days prior to the trial, unless it was unreasonable to do so, in order to allow everyone to know the rules before the trial started.

Ms. Carpeneti continued her sectional analysis of the bill and stated that Sections 17 and 18 addressed some efficiency requirements. The two sections specified that a person who had been in a treatment program as a condition of bail release, a condition of release while his/her conviction was being appealed, or a condition of a petition to revoke probation to request credit for the time in the treatment program in order to allow the court to make a decision regarding whether a person should get credit for time in treatment programs. She discussed a recent case

that litigated a claim of credit for time in a treatment program that had occurred 10 years before the litigation and pointed out that Sections 17 and 18 required people to raise the issue as close as possible to the time that was served; this would allow the court to resolve the issue with accuracy.

9:59:06 AM

Vice-Chair Fairclough noted that Co-Chair Meyer had joined the committee.

Ms. Carpeneti continued to speak to the sectional analysis of the bill and related that section 19 specified that the court could impose a suspended imposition of sentence (SIS) for someone who was convicted of sex trafficking; she noted that it was highly unlikely that a court would do so but that the section clarified that a person convicted of those crimes would be ineligible for an SIS. She pointed out that Section 20 required the judge to give some consecutive time when they were sentencing a person for more than one crime involving the distribution of child pornography, the possession of child pornography, or the distribution of indecent material of minors. See related that Sections 21 and 22 had already been discussed and pointed out that Section 23, which she considered to be a conforming amendment, corrected an error in the definition of "sexual felony," which was found in Title 12 of the Alaska Statutes. She stated that sex trafficking in the 1st degree and the online enticement of a minor were used as sexual felonies in the state's sentencing law regarding the increased presumptive ranges for sex felonies. She pointed out that sex trafficking in the 1st degree and the online enticement of a minor were addressed in the sentencing provision and opined that they should also be defined as sex felonies in the definition section.

Ms. Carpeneti continued to give a sectional analysis of the bill. She stated that Section 24 had already been discussed, but that it required a person who was convicted of felony prostitution, who would be a patron of a child prostitute, to register as a sex offender. She pointed out that a patron of a child prostitute would not be prosecuted for a felony unless the patron was at least 18 years-of-age, the prostitute was under 18 years-of-age, and that there was a difference of at least 3 years between the ages of the two people. She stated that Sections 25 and 26 were

conforming amendments that addressed what information had to be on a civil protective order for domestic violence crimes for stalking and sexual assault. She pointed out that there was a warning in statute that advised people who had been served with a protective order that the violation of certain provisions in the order might be a crime and related that it also warned that the maximum fine for a violation was a Class A misdemeanor. She pointed out that under the current statute, the maximum fine for a Class A misdemeanor was $5,000; however, the legislature had raised the maximum fine several years prior to $10,000 for that crime and the two sections reflected the change in the statute.

10:02:34 AM

Ms. Carpeneti continued to speak to the sectional analysis of the bill and related that Section 27 addressed the privilege between a counselor and a victim of domestic violence and sexual assault. She stated that the current law provided for an evidentiary privilege of confidential communications between the victim and the counselor; however, the way the bill was currently drafted, it did not recognize that privilege for counselors who were working on a U.S. Military base or who were contracted by the U.S. military. Section 27 made the necessary changes to provide the protection of confidential communications for counselors who worked on military bases or who were contracted by the U.S. Military. She opined that Section 28 had also been previously described, but that it allowed victims of sex trafficking, human trafficking in any degree, or victim of the unlawful exploitation of a minor to apply for compensation from the violent crimes compensation board. She stated that Sections 29, 40, and 41 made the requirements more explicit for a court recognize the impact of the crime on the victim at the point of sentencing. Section 40 required the pre-sentence report to include a victim's impact statement or an explanation of why the victim or his/her representative could not be interviewed. She related that Section 41 required the court to take the impact on the victim into account when preparing the sentence report, as well as for other purposes. She reported that Section 29 required the Alaska Judicial Council to include information about the judges' attention to the victims' damages at sentencing when it was compiling information in connection with a retention election.

Ms. Carpeneti continued to speak to the sectional analysis of the bill and stated that Section 30 specified that a person who was convicted of an unclassified or a Class A sex felony was not eligible for mandatory parole, which was otherwise known as "good time." She relayed that Sections 31 through 34 all addressed an issue that was raised by the attorney general. She explained that under current law, law enforcement could apply to the attorney general to get an administrative subpoena for identification information from an internet service provider. She shared that currently only the attorney general could consider and approve those subpoenas. Sections 31 through 34 allowed the subpoena authority to be designated to either the head of the Civil or Criminal Divisions of the Department of Law. She stated that Section 35 addressed when the Office of Children's Services can apply to a judge for an excuse for making reasonable efforts to unite the child in need of aid with a parent or guardian. She explained that the Office of Children's Services was required to make reasonable efforts to reunite a parent with a child, but Section that 35 allowed the office to ask a judge for the discretion to be released from this requirement. She related that a judge had the discretion under the bill to excuse the requirement from making reasonable efforts to reunite the child and parent if the court found by clear and convincing evidence that the parent or guardian had sexually abused the child, sexually abused another of their children, or was required to register as sex offender or child kidnapper. She pointed out that the authority in Section 35 was discretionary and that there were some circumstances where efforts to reunite a child with a parent or guardian were worthy.

Ms. Carpeneti continued to address the bill's sectional analysis and stated that Section 39 adopted a court rule that would help prevent the publication of child pornography; it required that the defendant and his/her attorney go to wherever the material was stored rather than requiring it to be copied again. She offered that every time this material was copied, the child was re-victimized. She added that the court rule would specify that child pornographic materials be kept in one place and viewed in that place. She stated that Section 40 and 41 had already been discussed and that Section 40 changed a court rule. She remarked that in most cases in a criminal prosecution, evidence of a defendant's prior bad acts were not admissible, but that there were exceptions to that law with

crimes dealing with domestic violence, as well as the physical and sexual abuse of a minor. She stated that one of the exceptions allowed evidence of prior physical or sexual abuse of a minor if the court determined that it was probative enough; the court weighed the probative value of the evidence against its prejudicial effect. For reasons she was unable to recall, the court rule limited evidence of prior bad acts to acts that were committed within the last ten years of the current offense that was being charged; the ten year look back did not apply to evidence of prior bad acts for domestic violence cases or sexual assault. She stated that the bill would remove the ten-year look back. She pointed out that sentences were fairly serious for people that were convicted of the physical or sexual abuse of a minor and that a person might not be out of jail for very long before that ten-year period had passed; the change in Section 40 did not require the evidence to be admitted, but would allow the judge to weigh that evidence like other evidence of prior bad acts when they determined whether the evidence ought to be introduced. She related that the remaining sections of the bill were applicability sections, which dealt with votes for court rules and shared that she would be happy to explain them if the committee desired.

10:11:27 AM

Senator Dunleavy inquired if the bill covered volunteer coaches or just volunteers. Ms. Carpeneti responded that she believed it was just volunteer coaches that were addressed in the bill. She shared the definition of athletic coach, which was found on page 20 of the bill, as follows:

> .."athletic coach" includes a paid or volunteer leader or assistant of a sports team..

Ms. Carpeneti thought that the bill would not apply to "parents who brought drinks for the team" or various other volunteers.

Senator Dunleavy noted that the bill seemed to apply to a broader term of "volunteer" rather than a more specific term of "volunteer coach." Ms. Carpeneti thought the bill applied to a volunteer leader or assistant to a sports team, and would not apply to a parent who helped out, drove kids home, or various other things.

Senator Dunleavy inquired if the bill was requesting a constitutional change. Ms. Carpeneti responded that she did not believe there was a constitutional change in the bill and inquired where Senator Dunleavy was making reference to.

Senator Dunleavy recalled that Ms. Carpeneti had discussed a required two-thirds majority vote from the legislature. Ms. Carpeneti responded that the constitution required a two-thirds majority by legislature in order to make a court-rule change, which did not represent a constitutional change.

Senator Dunleavy pointed to page 13, line 9 of the bill and inquired if the age was being changed to less than 20 years old. Ms. Carpeneti apologized for not mentioning it earlier and responded that it was a conforming change. She explained that the prior year, the legislature had amended the sex trafficking laws that dealt with 1st degree offenses. The bill's provision provided that it was an unclassified felony for a person to commit sex trafficking for a victim under 20 years of age; the previous benchmark for a felony had been 18 years old, but the legislature had changed the age to 20. She explained that testimony had indicated that most kids under the age of 20 years needed special protection from the perpetrators of sex trafficking. She related since the time that sex trafficking had been made a crime Alaska, sex traffickers had been required to register as sex offenders; the provision simply changed the age to under 20 years old to reflect the change that was made by the legislature the prior year.

Senator Bishop pointed to Section 27 of the bill and inquired if it expanded the legislation's scope to include other branches of the armed services in order to allow counseling centers to work back and forth with each other. Ms. Carpeneti replied that it defined a victim counseling center to include those that were operated by the U.S. Military or an organization that was contracted by the U.S. Military to provide counseling services to victims.

10:15:42 AM

Senator Bishop pointed to Section 29 of the bill and related that it required the Alaska Judicial Council to

include information about a judge's considerations of victims when imposing a sentence in a felony case. He requested further explanation of this section and inquired if it meant that there was a "rap sheet" on the judge before he was elected. Ms. Carpeneti responded that the Alaska Judicial Council gathered information on judges when they would be up for judicial retention and that the information was gathered from a variety of sources. Section 29 would require the council to include information that they received about a judge regarding his/her consideration of the victims in the imposition of sentence.

Senator Bishop noted that in the interest of saving time, he would save his other questions for outside the committee.

10:16:44 AM

Vice-Chair Fairclough OPENED public testimony.

LINDA GIANI, SELF, WASILLA (via teleconference), expressed concerns regarding the bill, specifically that the statutes made people not want to report suspected abuse or neglect and did not protect reporters completely. She related that she was an independent care coordinator who worked with extremely vulnerable clients, none of which had the communication skills to relate that they were being abused. She shared that she was currently involved in an eight-year long lawsuit that was a result of a report of harm that she had filed against an assistance living provider on behalf a six-year client. She related that a lawsuit had been filed against her, despite the fact that she was a state-certified care coordinator who acted in accordance with the statute by filing a report of harm in good faith. She recalled that the State of Alaska and Adult Protective Services (APS) had also sued in the case. She stated that Superior Court in Palmer had ruled in her favor, but that she had lost the appeal in the Alaska Supreme Court. While the Alaska Supreme Court had ruled against her in the case, it had ruled in favor of the State of Alaska and APS. She opined that the reason that the suit was filed and was being continued was the claim that she had not acted in good faith. She offered that the plaintiff's attorney had come up with "falsehoods" to show that the report of harm was not filed in good faith. She pointed out that APS had "virtually" said that everything that was filed in the report was true and represented violations, and pointed out

that she had only been doing her job. She discussed her difficulties in dealing with the lawsuit and warned that if she lost the case, it would send a message to everyone to not report harm. She shared that most people that she knew were not currently reporting harm. She offered that unless the words "good faith" were removed from the statute, the issue would make reporters think twice before reporting abuse. She pointed out that after she had been sued, another person in her client's home had filed a report of harm that validated the same violations.

10:21:46 AM

Vice-Chair Fairclough CLOSED public testimony.

Vice-Chair Fairclough discussed the weekly agenda for the committee.

Co-Chair Meyer discussed housekeeping.

Senator Dunleavy requested more information about indemnification and the Good Samaritan concept in the State of Alaska.

Vice-Chair Fairclough hoped that DOL would take some time to discuss the bill with each committee member and noted that there had been significant discussion regarding "volunteer" in the legislation. She requested that the responses to members' questions be submitted in writing to Co-Chair Meyer's office. She noted that committee members had the ability to solicit legal counsel in order to make amendments to the bill.

SB 22 was HEARD and HELD in committee for further consideration.

10:24:11 AM
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ADJOURNMENT

The meeting was adjourned at 10:24 a.m.